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CHARLES ELMORE DROPLEY
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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1944

No. 912

BULLDOG ELECTRIC PRODUCTS CO.,
Petitioner,

v.

WESTINGHOUSE ELECTRIC AND MANUFACTURING
COMPANY,
Respondent.

**REPLY BRIEF FOR PETITIONER IN SUPPORT OF
PETITION FOR WRIT OF CERTIORARI**

1. Respondent asserts that the action of the District Court in striking the equitable or unclean hands defenses, raised by the petitioner, does not refuse a stay of an action at law. This contention is without merit since the declaratory judgment counterclaim brought by respondent, and as to which the equitable defenses of unclean hands were urged by petitioner, prays for "an injunction restraining petitioner, *inter alia*, from instituting or continuing *any* (this italics ours) action for alleged infringement of said patent against respondent, any jobber, dealer or uses * * *." (Quoting from page 2 of Brief for Respondent.)

Petitioner could have instituted any action, including an action at law, against respondent for infringement of the patent attacked by respondent's counterclaim for declaratory judgment. Petitioner could have had the patent tried in an action at law. Respondent seeks to enjoin any action, including an action at law, and in effect, seeks to enjoin the trial of the patent at law. Petitioner seeks to have the equitable defense of unclean hands tried with, or before, the patent trial takes place. The order of the District Court prevents the patent trial from being stayed and thus eliminates the possibility of an action at law being tried after the equitable defense has been tried.

This has the effect of converting the declaratory judgment procedure into a means of depriving a defendant *for all time* (if such decree is not appealable) of his right to plead an equitable defense, and not only refuses to stay but actually cuts off the right to an action at law.

2. At page 9, respondent quotes from our brief as follows:

"We do not seek, at this time, permission to examine and determine the conduct of Westinghouse.

"By its Reply in New York, BullDog seeks merely the right to make the New York Courts aware of the Westinghouse monopoly and illegal dominance in the circuit breaker business in order that the New York Courts understand and appreciate the effect on the public of the attack by Westinghouse against the BullDog patent and BullDog's use of it."

in an effort to establish the petition as moot and purposeless.

This effort by respondent distorts the obvious meaning of the statement in its context—which is—merely that

this petition does not seek particular relief as to the right to take depositions, but rather seeks the greater right—to preserve the right to plead and prove to the counter-claim—and to assert the stricken defenses.

Respectfully,

ABRAHAM J. LEVIN,
DANIEL G. CULLEN,
Counsel for Petitioner.